

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

986 CRIMINAL WRIT PETITION NO. 635 OF 2020

. Vitthal s/o. Kallapa Badchi (C-221),
Age - 63 years old, Occu. Nil,
R/o. At present Visapur Open District
Prison, District Ahmednagar. ..Petitioner

Versus

1. The State of Maharashtra
Through its Home Department
Mantralaya Mumbai.
2. The Superintendent of the Open
Prison Visapur, District Ahmednagar. ..Respondents.

...

Mrs. Sharda P. Chate, Advocate for Petitioner.
Mrs. D. S. Jape, APP for the Respondents- State.

...

987 CRIMINAL WRIT PETITION NO. 636 OF 2020

. Devram s/o. Yashwant Wagh,
Age - Major, Occu. Nil,
R/o. At present Visapur Open Prison,
Taluka Shrigonda, District Ahmednagar. ..Petitioner

Versus

1. The State of Maharashtra
Through its Home Department
Mantralaya Mumbai.
2. The Superintendent of the Open
Prison Visapur, District Ahmednagar. ..Respondents.

...

Mrs. Sharda P. Chate, Advocate for Petitioner.
Mr. A. V. Deshmukh, APP for the Respondents- State.

...

988 CRIMINAL WRIT PETITION NO. 637 OF 2020

. Kashiram s/o. Salunke (c-130)
Age 55 years, Occu. Nil,
R/o. At present Visapur Open District,
Prison, District Ahmednagar. ..Petitioner

Versus

1. The State of Maharashtra
Through its Home Department
Mantralaya Mumbai.
2. The Superintendent of the Open
Prison Visapur, District Ahmednagar. ..Respondents.

...
Mrs. Sharda P. Chate, Advocate for Petitioner.
Mr. M. M. Nerlikar, APP for the Respondents- State.
...

989 CRIMINAL WRIT PETITION NO. 638 OF 2020

. Raju s/o. Kakdya Farle,
Age Major, Occu. Nil,
R/o. At Post Water Ranpatti, Taluka Visa
Dist. At present Visapur Open Prison,
District Ahmednagar. ..Petitioner

Versus

1. The State of Maharashtra
Through its Home Department
Mantralaya Mumbai.
2. The Superintendent of the Open
Prison Visapur, District Ahmednagar. ..Respondents.

...
Mrs. Sharda P. Chate, Advocate for Petitioner.
Mrs. D. S. Jape, APP for the Respondents- State.
...

990 CRIMINAL WRIT PETITION NO. 639 OF 2020

- . Dattatrya s/o. Named Kundande (C-238),
Age 55 years old, Occu. Nil,
R/o. At present Visapur Open District
Prison, District Ahmednagar. ..Petitioner

Versus

1. The State of Maharashtra
Through its Home Department
Mantralaya Mumbai.
2. The Superintendent of the Open
Prison Visapur, District Ahmednagar. ..Respondents.

...
Mrs. Sharda P. Chate, Advocate for Petitioner.
Mr. M. M. Nerlikar, APP for the Respondents- State.
...

991 CRIMINAL WRIT PETITION NO. 640 OF 2020

- . Pandurang s/o. Isaa Bolbat (C-217),
Age 70 years old, Occu. Nil,
R/o. At present Visapur Open District
Prison, District Ahmednagar. ..Petitioner

Versus

1. The State of Maharashtra
Through its Home Department
Mantralaya Mumbai.
2. The Superintendent of the Open
Prison Visapur, District Ahmednagar. ..Respondents.

...
Mrs. Sharda P. Chate, Advocate for Petitioner.
Mr. P. G. Borade, APP for the Respondents- State.
...

992 CRIMINAL WRIT PETITION NO. 641 OF 2020

. Subhas s/o. Raghunath Kamble (C-234),
Age 55 years old, Occu. Nil,
R/o. At present Visapur Open District
Prison, District Ahmednagar. .. Petitioner

Versus

1. The State of Maharashtra
Through its Home Department
Mantralaya Mumbai.
2. The Superintendent of the Open
Prison Visapur, District Ahmednagar. ..Respondents.

...
Mrs. Sharda P. Chate, Advocate for Petitioner.
Mr. M. M. Nerlikar, APP for the Respondents- State.
...

993 CRIMINAL WRIT PETITION NO. 642 OF 2020

. Laxman s/o. Narsu Pagi,
Age Major, Occu. Nil,
R/o. At present Visapur Open District
Prison, District Ahmednagar. ..Petitioner

Versus

1. The State of Maharashtra
Through its Home Department
Mantralaya Mumbai.
2. The Superintendent of the Open
Prison Visapur, District Ahmednagar. ..Respondents.

...
Mrs. Sharda P. Chate, Advocate for Petitioner.
Mr. S. J. Salgare, APP for the Respondents- State.
...

994 CRIMINAL WRIT PETITION NO. 643 OF 2020

. Gundwanya s/o. Ishwar Shined (C-223),
Age 55 years old, Occu. Nil,
R/o. At present Visapur Open District
Prison, District Ahmednagar. ..Petitioner

Versus

1. The State of Maharashtra
Through its Home Department
Mantralaya Mumbai.
2. The Superintendent of the Open
Prison Visapur, District Ahmednagar. ..Respondents.

...
Mrs. Sharda P. Chate, Advocate for Petitioner.
Mr. A. V. Deshmukh, APP for the Respondents- State.
...

995 CRIMINAL WRIT PETITION NO. 644 OF 2020

. Navnath s/o. Dadabhau Gawde (C-306),
Age Major, Occu. Nil,
R/o. At present Visapur Open District
Prison, District Ahmednagar. .. Petitioner

Versus

1. The State of Maharashtra
Through its Home Department
Mantralaya Mumbai.
2. The Superintendent of the Open
Prison Visapur, District Ahmednagar. ..Respondents.

...
Mrs. Sharda P. Chate, Advocate for Petitioner.
Mr. P. G. Borade, APP for the Respondents- State.
...

996 CRIMINAL WRIT PETITION NO. 645 OF 2020

Fulkanda @ Suresh Ranganna Vadde,
Age Major, Occu. Nil,
R/o. Bhimrao Taras Chawl, Behind Masjid,
Dehu Road, M. B. Camp,
At present Visapur Open Prison,
Taluka Shrigonda, District Ahmednagar. ..Petitioner

Versus

1. The State of Maharashtra
Through its Home Department
Mantralaya Mumbai.
2. The Superintendent of the Open
Prison Visapur, District Ahmednagar. ..Respondents.

...
Mrs. Sharda P. Chate, Advocate for Petitioner.
Mr. S. G. Karlekar, APP for the Respondents- State.
...

997 CRIMINAL APPLICATION NO. 1020 OF 2020
IN
CRIMINAL WRIT PETITION NO. 521 OF 2020
WITH
CRIMINAL WRIT PETITION NO. 521 OF 2020

1. Rajeshkhanna s/o. Rajaram Bhosle,
Age Major, Occu. Nil,
At present Visapur District Open Prison
(Convict No. C/270)
2. Ramesh Raosaheb Gaikwad,
Age Major, Occu. Nil, R/o. As above.
(Convict No. C/234)
3. Shidwa Navshya Raote,
Age Major, Occu. Nil, R/o. As above.
(Convict No. C-252)
4. Ravindra Hirachand Shinde,
Age Major, Occu. Nil, R/o. As above.
(Convict No. C-232)

5. Laxman Navsu Pagi,
Age Major, Occu. Nil, R/o. As above.
(Convict No. C-245)
6. Raju Kakdya Farlye,
Age Major, Occu. Nil, R/o. As above.
(Convict No. C-249)
7. Suresh Ranganna Vadde,
Age Major, Occu. Nil, R/o. As above.
(Convict No. C-238)
8. Dattatrya Namdev Kudande,
Age Major, Occu. Nil, R/o. As above.
(Convict No. C-231)
9. Navnath Dadabhau Gawde,
Age Major, Occu. Nil, R/o. As above.
(Convict No. C-306)
10. Kashiram Rama Salunkhe,
Age Major, Occu. Nil, R/o. As above.
(Convict No. C-130)
11. Gundwanya Ishwar Shind,
Age Major, Occu. Nil, R/o. As above.
(Convict No. C-223)
12. Subhash Raghunath Kamble
Age Major, Occu., R/o. As above.
(Convict No. C-234)
13. Vitthal Kallapa Badchi,
Age Major, Occu. Nil, R/o. As above.
(Convict No. C-221)
14. Pandurang Isaa Bolbat,
Age Major, Occu. Nil - Labour,
R/o. As above. (Convict No. C-217)
15. Devram Yashwant Wagh,
Age Major, Occu. Nil - Labour,
R/o. As above. (Convict No. C-285) .. Applicants
(Original Petitioners)

Versus

1. The State of Maharashtra
Through its Home Department
Mantralaya Mumbai.
2. The Superintendent
Visapur District Open Prison,
Visapur, District Ahmednagar-413703
3. The Deputy Inspector General of Police,
(Prison) Western Region Yerwada,
Pune. ..Respondents.

...
Mrs. Sharda P. Chate, Advocate for Petitioners.
Mr. A.V.Deshmukh, APP for the Respondents- State.
...

**CORAM : T.V.NALAWADE &
M.G.SEWLIKAR, JJ.**

DATE: 16th July, 2020

ORAL JUDGMENT (Per : T.V.Nalawade, J.) :-

1. Rule. Rule made returnable forthwith.
2. By consent of both the sides, heard for final disposal.
3. The submissions made and record show that Criminal Writ Petition No.521 of 2020 was filed by in all 15 prisoners for the relief of emergency parole under the scheme published by the Government in the Notification dated 08.05.2020. In that proceeding, due to mistake or due to oversight, on 29.05.2020, this Court passed the following order;

“ The learned Assistant Public Prosecutor for respondents on instructions submits that as the petitioner is convicted under special act i.e. TADA, the higher power committee has rejected the request of the petitioner for parole.

2. Mr. Suryawanshi, the learned advocate appears on behalf of Ms. Chate and submits that, as the high power committee has rejected the application, the writ petition may kindly be disposed of.

3. In view of the statement made above, the criminal writ petition is disposed of. No costs.”

4. It is the contention of these prisoners that they are not convicted for the offence punishable under TADA and so the aforesaid order needs to be recalled. With that contention, Criminal Application No.1020 of 2020 is filed by the petitioners and they have prayed for recalling the aforesaid order. They have also filed separate proceedings for the relief to quash and set-aside the order of rejection of emergency parole made against them. The order of rejection is on the record against every prisoner. The reason is given that they were released on either parole or furlough on two occasions in the past and so they are not entitled to get the benefit of the scheme given in the Notification dated 08.05.2020. The order further shows that on one occasion every prisoner was released on furlough leave and on that occasion, each prisoner had returned to prison in time.

5. The submissions made and record show that the petitioners from all these petitions are not convicted under the proceeding of TADA. They are kept in Visapur District Open Prison, which is under jurisdiction of this Court. There is nothing adverse against them due to which the parole or furlough could have been rejected. Only question is that whether they are eligible for getting benefit of the scheme mentioned in the Notification dated 08.05.2020. Relevant portion [Clause 2] of the said Notification reads as under:

“2. In sub-rule-(1) of the rule 19 of the Maharashtra Prisons (Mumbai Furlough and Paraole) Rules, 1959, after clause (B) the following clause shall be added, namely :-

(C) On declaration of epidemic under the Epidemic Diseases Act, 1897, by State Government :

(i) For convicted Prisoners whose maximum punishment is 7 years or less, on their application shall be favorably considered for release on emergency parole by the Superintendent of Prison for a period of 45 days or till such time that the State Government withdraws the Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days.

(ii) For convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by Superintendent of Prison, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough), for the period of 45 days

or till such time that the State Government withdraws the Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days:

Provided that the aforesaid directions shall not apply to convicted prisoners convicted for serious economic offences or bank scams or offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA, etc. (which provide for additional restrictions on grant of bail in addition to those under the Code of Criminal Procedure, 1973 (2 of 1974) and also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra."

6. This Court had occasion to consider the aforesaid Notification in Criminal Writ Petition No.571 of 2020 (*Kavita W/o. Dilip Baviskar Vs. The State of Maharashtra*) decided on 30.06.2020. This Court has considered the object behind the scheme mentioned in the Notification dated 08.05.2020. This Court has held that, if the prisoner is otherwise eligible to get furlough or parole, he can get the benefit of the said Notification. Only condition is that, he ought to have been granted furlough or parole on two occasions in the past and on two last occasions, he has returned in time. This condition may not come in the way, if the prisoner had not at all availed furlough or parole in the past. Only to ensure that prisoner will return to jail after the period

given in the Notification is over, such condition is put by the State. There is no other reason behind such condition. Many a times the prisoners do not apply for parole as it amounts to suspension of sentence.

7. In the present matters, all the prisoners are eligible for getting parole and/or furlough under the Maharashtra Prisons (Furlough and Parole) Rules 1959. Only because they did not avail furlough or parole on second occasion, the benefit of aforesaid Notification cannot be denied to them. In view of these circumstances, this Court holds that the orders made against the prisoners cannot be sustain in law. Similarly, the order made by this Court due to oversight, of disposal of the proceeding of Criminal Writ Petition No.521 of 2020 needs to be recalled. In the result, the following order;

ORDER

- I) Criminal Application No.1020 of 2020 is allowed.
- II) The order of disposal of Writ Petition No.521 of 2020 made by this Court against the petitioners, dated 29.05.2020, is hereby recalled.

III) Other Criminal Writ Petitions filed by the Prisoners-Petitioners for relief of quashing and setting aside the order of rejection of emergency parole are allowed.

IV) Each of the petitioners is to be released on emergency parole subject to routine terms and conditions of parole.

V) Rule made absolute in above terms.

VI) Criminal Writ Petition No.521 of 2020 also stands disposed of in aforesaid terms.

(M.G.SEWLIKAR)
JUDGE

(T.V.NALAWADE)
JUDGE

SPT